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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jane Doe, et al.,

10 Plaintiffs,

11 v.

12 Kris Mayes, et al.,

13 Defendants.
14

No. CV-24-02259-PHX-MTL

ORDER

15 Before the Court is the Motion for Leave to Intervene (Doc. 130) filed by
16 prospective intervenor Arizonans for Rational Sex Offense Laws (“AZRSOL”). AZRSOL
17 seeks intervention as a matter of right and permissive intervention under Federal Rules of
18 Civil Procedure 24. (Doc. 130 at 1). Defendant Attorney General Mayes opposes the
19 Motion.¹ (Doc. 133).

20 **I.**

21 Intervention as a matter of right is permitted under Rule 24(a)(2) of the Federal
22 Rules of Civil Procedure. A four-part test determines when intervention as a matter of right
23 is appropriate:

24 (1) the motion must be timely; (2) the [prospective intervenor]
25 must claim a “significantly protectable” interest relating to the
26 property or transaction which is the subject of the action; (3)
the [prospective intervenor] must be so situated that the
disposition of the action may as a practical matter impair or

27 ¹ Attorney General Mayes argues intervention is inappropriate because AZRSOL does not
28 have associational standing and has identical interests to the existing plaintiffs. (Doc. 133
at 1.) Because the Court agrees the existing parties adequately represent AZRSOL’s
interests, it declines to address the Attorney General’s standing argument.

1 impede its ability to protect that interest; and (4) the
2 [prospective intervenor's] interest must be inadequately
3 represented by the parties to the action.

4 *Wilderness Soc'y v. U.S. Forrest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011). The
5 prospective intervenor bears the burden of showing each of these requirements are
6 satisfied. *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004). In
7 assessing the prospective intervenor's arguments, the court is "guided primarily by
8 practical and equitable considerations." *Callahan v. Brookdale Senior Living Communities,*
9 *Inc.*, 42 F.4th 1013, 1020 (9th Cir. 2022).

10 At issue here is the fourth *Wilderness Society* element. Three factors help decide
11 whether an existing party "adequately represents the interests of a prospective intervenor."

12 *Id.* Those factors are:

13 (1) whether the interest of a present party is such that it will
14 undoubtedly make all of a [prospective] intervenor's
15 arguments; (2) whether the present party is capable and willing
16 to make such arguments; and (3) whether a [prospective]
17 intervenor would offer any necessary elements to the
18 proceeding that other parties would neglect.

19 *Id.* (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)). When a
20 prospective intervenor's interest is identical to an existing party, a compelling showing is
21 required to demonstrate inadequate representation. *See id.* at 1020-21.

22 Attached to AZRSOL's motion to intervene is its proposed Complaint in
23 Intervention (Doc. 130-2). That pleading essentially realleges the thirteen causes of action
24 already asserted by Plaintiffs. (*Compare* Doc. 82, *with* Doc. 130-2.) AZRSOL concedes
25 this point in its briefing. (*See* Doc. 142 at 12-11.) But it argues intervention is still
26 appropriate because the Court will benefit from its statewide viewpoint and extensive
27 experience concerning the issues at stake. (*See id.*)

28 AZRSOL's argument misses the mark. The fourth *Wilderness Society* element looks
at the outcome being sought by the existing plaintiffs. *See League of United Am. Citizens*
v. Wilson, 131 F.3d 1297, 1305 (9th Cir. 1997) ("Where an applicant for intervention and
an existing party have the same ultimate objective, a presumption of adequacy of

representation arises.”).² Relevant experience or different viewpoints do not factor into the analysis. Because AZRSOL seeks a finding Senate Bills 1236 and 1404 are unconstitutional, (Doc. 130-2 at 20), and because that same outcome is already being litigated by Plaintiffs, (*see* Doc. 82 at 54), AZRSOL has an identical interest to Plaintiffs. *See Callahan*, 42 F.4th at 1020-21. Intervention is only warranted if AZRSOL can demonstrate a compelling showing under the fourth *Wilderness Society* element. *See id.*

As previously discussed, AZRSOL argues intervention is appropriate based on its viewpoint and extensive experience. (*See* Doc. 142 at 12-11.) This does not satisfy the requirement for a compelling showing. Additionally, the Court notes the voluminous record for the preliminary injunction proceedings show that Plaintiffs will undoubtedly make all AZRSOL’s proposed arguments, do so willingly, and will not neglect necessary elements of the proceedings. *See Callahan*, 42 F.4th at 1020. For these reasons, the Court finds that AZRSOL has not demonstrated its interests are inadequately represented by Plaintiffs.

II.

AZRSOL alternatively moves for permissive intervention. Under Federal Rule of Civil Procedure 24(b), the Court may grant permissive intervention under the following circumstances:

(1) In General. On timely motion, the court may permit anyone to intervene who: (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact.

“Thus, ‘a court may grant permissive intervention where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant’s claim or defense, and the main action, have a question of law or a

² Although the United States Supreme Court’s opinion in *Berger v. North Carolina Conference of the NAACP*, 597 U.S. 179 (2022), calls into questions whether a presumption of adequacy is appropriate under Rule 24(a)(2), it does not disrupt the identical identity rule or caselaw showing that the fourth *Wilderness Society* element looks at the outcome being sought by the existing plaintiffs. *See Callahan*, 42 F.4th at 1021 n.5.

1 question of fact in common.” *United States v. City of Los Angeles*, 288 F.3d 391, 403 (9th
 2 Cir. 2002) (quoting *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 839 (9th Cir.
 3 1996)).

4 The court exercises broad discretion to determine whether a prospective intervenor
 5 shares an interest in the litigation. *Perry v. Schwarzenegger*, 630 F.3d 898, 905-06 (9th Cir.
 6 2011). In evaluating the prospective intervenor’s asserted interest, the Court should
 7 consider:

8 [T]he nature and extent of the intervenors’ interest, their
 9 standing to raise relevant legal issues, the legal position they
 10 seek to advance, and its probable relation to the merits of the
 11 case[,] whether changes have occurred in the litigation so that
 12 intervention that was once denied should be reexamined,
 13 whether the intervenors’ interests are adequately represented
 14 by other parties, whether intervention will prolong or unduly
 15 delay the litigation, and whether parties seeking intervention
 will significantly contribute to full development of the
 underlying factual issues in the suit and to the just and
 equitable adjudication of the legal questions presented.

16 *Id.* at 905 (quoting *Spangler v. Pasadena Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir.
 17 1977)); *see also* Fed. R. Civ. P. 24(b)(3) (stating the court “must consider whether the
 18 intervention will unduly delay or prejudice the adjudication of the original parties’ rights”).

19 The Court has already found that AZRSOL’s interests and legal arguments duplicate
 20 those advanced by Plaintiffs. Its interests, moreover, are adequately represented by
 21 Plaintiffs. Including AZRSOL will not assist in the full development of factual issues, as
 22 those issues will be adequately developed by Plaintiffs during the discovery process.³

23 Plaintiffs and their counsel have already proven to be knowledgeable, experienced,
 24 and diligent in litigating the constitutional claims asserted here. For example, Plaintiffs and
 25 their counsel have drafted a complex, multi-count complaint challenging the
 26 constitutionality of state legislation. They skillfully litigated a preliminary injunction
 27 motion and evidentiary hearing. And Plaintiffs briefed an interlocutory appeal.

28 ³ The record is already quite voluminous, containing over 150 docket entries.

1 As to undue delay and prejudice, the Court finds that this factor weighs heavily in
2 favor of Defendants. This case involves claims against numerous public entities at the state
3 and county level. Expanding Plaintiffs' side of the litigation will multiply discovery
4 activity and slow this matter's timely resolution requiring duplicative—and perhaps
5 wasteful—expenditure of public funds and other resources.

6 The Court is mindful of prospective intervenor's desire to be heard on the
7 underlying issues. Accordingly, the Court will grant AZRSOL leave to file an *amicus*
8 *curiae* brief at the summary judgment stage. To avoid duplicating arguments that Plaintiffs
9 may assert, the *amicus* brief is due 14 days after Plaintiffs' file their motion for summary
10 judgment. Defendants may respond to the *amicus* brief within 14 days after it is filed.

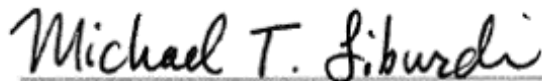
11 **IT IS THEREFORE ORDERED** that the Motion for Leave to Intervene (Doc.
12 130) is **DENIED**.

13 **IT IS FURTHER ORDERED** that Arizonans for Rational Sex Offense Laws is
14 granted leave to file an *amicus curiae* brief during the summary judgment stage of litigation.

15 1. The brief must be filed no later than 14 days after Plaintiffs' file their
16 motion for summary judgment. Defendants may respond to the *amicus* brief within 14 days
17 after it is filed. No reply is permitted.

18 2. Briefs must conform with LRCiv 7.1 and must not exceed 17 pages in
19 length.

20 Dated this 13th day of March, 2025.

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23 Michael T. Liburdi
24 United States District Judge
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